

and will not be appointed—that he makes his decisions based on the qualifications of the candidates. Despite these statements, the President's nominees seem to have certain striking similarities. They seem to favor powerful interests over individuals. They favor States' rights over civil rights. And many of them are all loyal Federalist Society members and committed to the political agenda of the most conservative wing of the Republican Party. The Senate's constitutional duty to provide advice and consent on judicial nominations is vital in these circumstances—Federal judges must be devoted first and foremost, not to a political platform or certain parties, but to the rule of law, the Constitution, and the basic principles of fairness and justice.

If we are to allow the President to pack the courts with political party loyalists and radical right-wing ideologues, we will cease to have a Government of laws and will end up with a Government controlled by the views of a few. We would risk having a judiciary that functions as a rubber stamp for any right wing argument, policy, or political goal sought to be achieved via the courts.

Yet, despite the troubling records of so many of Bush's confirmed judges and the other disappointing developments this year, Senate Democrats have confirmed vast members of nominees who have come to the Senate floor and are today again making sure that the process of judicial appointments moves forward. Democrats have not obstructed the confirmation process for judicial and executive branch nominations as Republicans did when President Clinton was in office. Today, we proceed to confirm a judicial nominee in spite of the President's recent actions, those of Senate Republicans, and serious reservations about this nominee.

Mr. Filip's nomination was reported favorably to the Senate last October. Had the Republican leadership wanted to proceed on it, this nomination could easily have been confirmed in October, November, or December last year before the Senate adjourned. Instead, partisans chose to devote 40 hours to a talkathon on the President's most controversial and divisive nominees rather than proceed to vote on those judicial nominees with the support of the Senate. The delay in considering this nomination is the responsibility of the Republican leadership.

I congratulate Mark Filip and his family on his confirmation.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Mark R. Filip, of Illinois, to be a U.S. District Court Judge for the Northern District of Illinois?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 8 Ex.]

YEAS—96

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McCain
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bayh	Durbin	Miller
Bennett	Ensign	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Fitzgerald	Nickles
Breaux	Frist	Pryor
Brownback	Graham (FL)	Reed
Bunning	Graham (SC)	Reid
Burns	Grassley	Roberts
Byrd	Gregg	Rockefeller
Campbell	Hagel	Santorum
Cantwell	Harkin	Sarbanes
Carper	Hatch	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lincoln	Wyden

NOT VOTING—4

Edwards
Hollings
Kerry
Lieberman

The nomination was confirmed.

The PRESIDING OFFICER. The President will be notified of the Senate's action.

The Senator from Nevada.

Mr. REID. Mr. President, very briefly, we have just approved the 171st judge during the Bush administration. There have been 171 judges approved. To my knowledge, there have been four he submitted who have not been approved, other than those who are going through the committee process. So the score is 171 to 4. A good average, I think.

SAFE, ACCOUNTABLE, FLEXIBLE,
AND EFFICIENT TRANSPORTATION
EQUITY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will continue consideration of S. 1072.

The Senator from Missouri.

AMENDMENT NO. 2265 WITHDRAWN

Mr. BOND. Mr. President, I withdraw amendment 2265.

The PRESIDING OFFICER. The Senator has that right.

The Senator from North Dakota.

AMENDMENT NO. 2267

(Purpose: To exempt certain agricultural producers from certain hazardous materials transportation requirements)

Mr. DORGAN. Mr. President, prior to the vote I indicated I had an amendment. I want to begin the discussion very briefly of the amendment. The amendment is one I have worked on for some while. It deals with a relatively small issue with respect to the context of this bill, but a rather large issue for family farmers. Let me describe what it is.

There was a justifiable effort to address issues dealing with homeland security by the Department of Transportation. They issued regulations that would regulate the shipment and transport of hazardous material in commerce in amounts that require the shipment to be placarded and also to implement security plans for that shipment.

The difficulty and the problem is this. The way the Department of Transportation developed this rule, the rule will apply to family farmers, for example, who have a 120-gallon fuel service tank in the back of their pickup truck. Those farmers are not going to have a security plan for that pickup truck and for that service tank.

It is perfectly logical to want to regulate for safety purposes the shipment of hazardous materials.

Let me give you an example of where this goes when the definitions are not carefully crafted. I was a senior in high school when myself and two of my best friends decided to go to the Black Hills of South Dakota for a weekend. It was a pretty big deal for us. We took a pickup truck and we had a 120-gallon service tank full of gasoline. We had a few dollars, and we bought 120 gallons of gasoline and a relatively new pickup, for three seniors in high school. We were prepared to have a pretty good time. If that happened today, we would under the current rules be required to have a security plan in place prior to taking our pickup truck and 120 gallons of regular gasoline on our trip to the Black Hills of South Dakota. Three high school seniors are not going to have a security plan to get enough gasoline to go to the Black Hills and have a good time. Why would we need a security plan? Because anything over 110 gallons of fuel, propane, chemicals, or hazardous materials will be required to have a security plan. Forget about three seniors who went to the Black Hills.

How about a farmer who has that 120-gallon service tank in the back of his pickup truck who stops at a local cafe and goes in to buy a cheeseburger? He is in violation of this rule by the Department of Transportation unless he can physically see his pickup truck through the window because he will be required to have a "security plan" and have a placard.

Again, when I was a young boy, my dad sent me to Dickinson, ND to get 5